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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 BRIT FANUEL AUGBORNE, III,

Case No.: 2:19-cv-01204-KJD-BNW

9 Petitioner

10 **ORDER**

v.

11 BRIAN WILLIAMS, et al.,

12 Respondents

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14 **The court notes at the outset that no courtesy copies—except as specified**
15 **at the conclusion of this order—are required in this case at this time.**

16 Petitioner Brit Fanuel Augborne, III has filed a 28 U.S.C. § 2254 habeas corpus
17 petition (ECF No. 1-1). His application to proceed in forma pauperis is granted. The
18 court has reviewed the petition pursuant to Habeas Rule 4, and it shall be served on
19 respondents.

20 A petition for federal habeas corpus should include all claims for relief of which
21 petitioner is aware. If petitioner fails to include such a claim in his petition, he may be
22 forever barred from seeking federal habeas relief upon that claim. See 28 U.S.C.
23 §2254(b) (successive petitions). If petitioner is aware of any claim not included in his

1 petition, he should notify the court of that as soon as possible, perhaps by means of a
2 motion to amend his petition to add the claim.

3 **IT IS THEREFORE ORDERED** that petitioner's application to proceed in forma
4 pauperis (ECF No. 3) is **GRANTED**.

5 **IT IS FURTHER ORDERED** that the Clerk **shall detach, file and**
6 **ELECTRONICALLY SERVE** the petition (ECF No. 1-1) on the respondents.

7 **IT IS FURTHER ORDERED** that the Clerk shall add Aaron D. Ford, Nevada
8 Attorney General, as counsel for respondents.

9 **IT IS FURTHER ORDERED** that respondents shall file a response to the petition,
10 including potentially by motion to dismiss, within **90 days** of service of the petition, with
11 any requests for relief by petitioner by motion otherwise being subject to the normal
12 briefing schedule under the local rules. Any response filed shall comply with the
13 remaining provisions below, which are entered pursuant to Habeas Rule 5.

14 **IT IS FURTHER ORDERED** that any procedural defenses raised by respondents
15 in this case shall be raised together in a single consolidated motion to dismiss. In other
16 words, the court does not wish to address any procedural defenses raised herein either
17 *in seriatum* fashion in multiple successive motions to dismiss or embedded in the
18 answer. Procedural defenses omitted from such motion to dismiss will be subject to
19 potential waiver. Respondents shall not file a response in this case that consolidates
20 their procedural defenses, if any, with their response on the merits, except pursuant to
21 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If
22 respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they shall
23 do so within the single motion to dismiss not in the answer; and (b) they shall

1 specifically direct their argument to the standard for dismissal under § 2254(b)(2) set
2 forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no
3 procedural defenses, including exhaustion, shall be included with the merits in an
4 answer. All procedural defenses, including exhaustion, instead must be raised by
5 motion to dismiss.

6 **IT IS FURTHER ORDERED** that, in any answer filed on the merits, respondents
7 shall specifically cite to and address the applicable state court written decision and state
8 court record materials, if any, regarding each claim within the response as to that claim.

9 **IT IS FURTHER ORDERED** that petitioner shall have **45 days** from service of
10 the answer, motion to dismiss, or other response to file a reply or opposition, with any
11 other requests for relief by respondents by motion otherwise being subject to the normal
12 briefing schedule under the local rules.

13 **IT IS FURTHER ORDERED** that any additional state court record exhibits filed
14 herein by either petitioner or respondents shall be filed with a separate index of exhibits
15 identifying the exhibits by number. The CM/ECF attachments that are filed further shall
16 be identified by the number or numbers of the exhibits in the attachment.

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1 **IT IS FURTHER ORDERED** that, at this time, the parties shall send courtesy
2 copies of **any responsive pleading or motion and all INDICES OF EXHIBITS ONLY**
3 to the Reno Division of this court. Courtesy copies shall be mailed to the Clerk of Court,
4 400 S. Virginia St., Reno, NV, 89501, and directed to the attention of "Staff Attorney" on
5 the outside of the mailing address label. **No further courtesy copies are required**
6 **unless and until requested by the court.**

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8 Dated: August 23, 2019

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KENT J. DAWSON
UNITED STATES DISTRICT JUDGE

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